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Paper No. 4

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LOS ANGELES, CA 90035

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OCT 18 2001

OFFICE OF PETITIONS

In re Application of :
Suresh Ramalingam et al :
Application No. 09/874,666 :
Filed: June 5, 2001 :
Attorney Docket No. 42390P7045D :

ON PETITION

This is a decision on the "Petition to Request Waiver of Declaration Surcharge," filed August 13, 2001, which is being treated as a petition under 37 CFR 1.181 (no fee) to vacate the Notice to File Missing Parts of Nonprovisional Application (hereafter Notice) mailed June 26, 2001.

The petition is granted.

The Notice of June 26, 2001 required the submission of an executed oath or declaration and a surcharge of \$130 for its late filing.

Petitioner states that a declaration was filed with the application on June 5, 2001. To support this assertion, petitioner has submitted a copy of a stamped return postcard which acknowledges receipt by the Patent and Trademark Office (PTO) on June 5, 2001 of, *inter alia*, a declaration and power of attorney having three pages.

The declaration acknowledged as having been received in the PTO on June 5, 2001 is not of record in the application file and cannot be located. However, MPEP 503 states that "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the declaration and power of attorney was received in the PTO on June 5, 2001, but lost after receipt thereof. In view of thereof, the Notice of June 26, 2001 is vacated. Consequently, no surcharge fee is required.

It appears that a \$80 independent claim fee was charged to petitioner's deposit account on August 15, 2001, which appears to be in error since this fee was previously paid on June 11, 2001. Accordingly, the duplicate \$80 claim fee will be credited to petitioner's deposit account in due course.

Any questions concerning this decision on petition may be directed to the undersigned at (703) 305-8680.

This application is being returned to the Office of Initial Patent Examination Division for preexamination processing.

A handwritten signature in cursive script, appearing to read "Frances Hicks".

Frances Hicks

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner
for Patent Examination Policy

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REQUEST FOR PATENT FEE REFUND

1 Date of Request: <u>10-16-01</u>		2 Serial/Patent # <u>09/874666</u>									
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED								
<input checked="" type="checkbox"/> Filing		<u>3</u>	<u>8/13/01</u>								
<input type="checkbox"/> Amendment			\$								
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<input type="checkbox"/> Notice of Appeal/Appeal			\$								
<input type="checkbox"/> Petition			\$								
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<input type="checkbox"/> Cert of Correction/Terminal Disc.			\$								
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<input type="checkbox"/> Assignment			\$								
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		7 TOTAL AMOUNT OF REFUND									
		\$ <u>80</u>									
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<input checked="" type="checkbox"/> Duplicate Payment											
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11 REFUND REQUESTED BY:											
TYPED/PRINTED NAME: <u>F. Hicks</u>		TITLE: <u>Ret's E/LN</u>									
SIGNATURE: <u>[Signature]</u>		PHONE: <u>305-8680</u>									
OFFICE: <u>4700</u>											
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APPROVED: <u>[Signature]</u>		DATE: <u>10-18-01</u>									

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